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FILED

MAY 21, 2003

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

Administrative Action

LUIS FERNANDEZ, D.P.M.

ORDER OF
LIMITED REINSTATEMENT

TO PRACTICE MEDICINE AND
SURGERY IN THE STATE OF
NEW JERSEY

This matter **was** most recently opened to the New Jersey State Board of Medical Examiners (hereinafter, "Board") upon receipt of the petition of Respondent, Luis Fernandez, D.P.M. (hereinafter, "Respondent"), seeking the restoration of his podiatric license. According to the record in this matter, on or about October 16, 1996, the Board entered an Order temporarily suspending Respondent's license. **The** Board entered a Final Order revoking Dr. Fernandez' license on March 31, **1998** based on his guilty plea to **three** counts of criminal sexual contact in the fourth degree involving two individuals, a minor female and **a** forty-nine year old male patient. The Final Order revoking Dr. Fernandez' license: assessed **a** civil penalty of \$7,500 and costs of \$2,252.50, and

CERTIFIED TRUE COPY

cleared to resume his practice of medicine. Dr. Fernandez testified that through his treatment with Dr. Gallina he had acquired vital insight into the underlying cause for his actions, specifically his marital relationship, and he has taken affirmative steps to **improve** and strengthen his marriage. In addition, Dr. Fernandez testified that Dr. Gallina had taught him the importance of establishing appropriate doctor/patient boundaries. Dr. Fernandez stated that he accepts full responsibility for his actions and that he **is** remorseful for **any** pain and suffering he caused to the two individuals. Dr. Fernandez also denied having ever acted in such **an** improper sexual manner either before or after the incidents which caused his license to be **revoked**.

Dr. Canavan testified that Dr. Fernandez has been **an** active member of the Physician-s Health Program since October, 1996. Dr. Canavan **was supportive** of Dr. Fernandez' request for the restoration of his medical license.

Based upon the materials and testimony before the Board, it appears that Dr. Fernandez has progressed well in his recovery, **and** is committed to practicing podiatry with integrity and in accordance with the laws and regulations of this State. The Board has considered the history of this matter and the length of time during which there have been no further incidents of **sexual** misconduct by Dr. Fernandez.

The Board having found that the within disposition is adequately protective of the public health, safety, and welfare,

IT IS ON THIS 13th DAY OF May, 2003
ORDERED:

1. Respondent Luis Fernandez, D.P.M.'s license to practice podiatry in the **State** of New Jersey shall be restored subject to the conditions set forth in this Limited Order of Reinstatement.

2. Respondent is hereby granted **leave** to resume the practice of podiatry under the supervision of Felix E. Roque, M.D in Dr. Roque's West New **York** office and only when Dr. Roque is physically present. Respondent is not permitted to practice at any other location, including Dr. Roque's Passaic office.

3. Prior **to** the commencement of **practice**, Respondent shall obtain Dr. Roque's signature on a copy of this Order **and** provide same to the Board. Dr. Roque's signature shall indicate his agreement to provide appropriate **supervision** of Respondent's podiatric practice. Dr. Roque's signature shall also indicate his agreement to provide the Board **with** quarterly reports documenting Respondent's progress, and providing immediate notification of any indication of a resumption of Respondent's former violative behavior or non-compliance with the Board's directives as set forth in this Order.

4. Prior to Respondent performing any in-office podiatric surgery, Respondent shall enroll in and successfully complete a course addressing the fundamentals of podiatry **and** podiatric surgery. This course shall **be** completed within **six** months of the date of this Order of Limited Reinstatement. Respondent shall secure prior approval of the Board for the specific course proposed to satisfy this requirement.

5. Respondent shall **employ** a registered nurse, licensed **practical nurse**, or physician assistant licensed in the State of New Jersey to act **as** a full time chaperone. **Said** chaperone is to accompany Respondent at all times when Respondent is involved **in** direct patient care. The chaperone shall be required to counter-sign **all** office notes to denote that he/she was present for each patient visit. The chaperone **is** to be fully informed concerning Respondent's **prior** acts, including being provided with a copy of this Order. The chaperone shall be required to sign an agreement with the Board to report

any misconduct on Respondent's part immediately to the Board, including any instances where the chaperone learns that Respondent has engaged in **any** direct patient care when the chaperone is not present.

6. Respondent shall continue to meet on a **semi-annual** basis with the Physicians' Health Program. **Any** change in the **frequency** of the meetings with the Physicians' Health Program shall be determined **by** the Medical Director of the Physicians' Health Program

7. The Physicians' Health Program shall submit semi-annual reports documenting Respondent's progress to the Medical Director of the Board. Any change in the frequency of the reporting of Respondent's progress shall correspond **to a** change in the frequency of Respondent meeting with the Physicians' Health Program

8. The Physicians' Health Program shall immediately notify the Board in the event of any indication of a resumption of Respondent's former violative behavior **or** non-compliance with the Board's **directives** as expressed herein.

9. Respondent shall pay 15% of his net income **per** month from the practice of podiatry towards the payment of the penalties in the amount of \$7,500 and costs in the amount of \$2,252.50 imposed by the Final Order dated March 31, 1998. Total repayment of all penalties and costs shall be made within two years of the **date** of this Order of Limited Reinstatement. **Any** failure by Respondent to **make** payments under the terms of this Order shall accelerate Respondent's total debt to the Board, and shall itself constitute professional misconduct pursuant to **N.J.S.A. 45:1-21(e)**, thereby subjecting Respondent to any and all remedies available to the Board pursuant to **N.J.S.A. 45:1-21** and 22.

IO. All payments shall be made **by** certified check or money order **payable** to the New Jersey **State** Board of Medical Examiners. Said payment shall be submitted to William Roeder, Executive Director, New Jersey **State** Board of **Medical** Examiners, P.O. Box 183, Trenton: New Jersey. 08625-0183.

11. Prior to **any** change in Respondent's practice of podiatry from the conditions outlined in this Limited Order of Reinstatement, Respondent shall **appear** before a Preliminary Evaluation Committee of the Board.

12. Respondent hereby consents to the entry of **an** Order of automatic suspension of license without notice, upon the Board's receipt of **any** information which the Board, in its sole discretion, deems reliable demonstrating a resumption of Respondent's former violative behavior or non-compliance with any conditions set forth herein.

13. Respondent shall have the **right** to **apply** for removal of the automatic suspension on two (2) days notice but in such event shall be limited to a showing that the information upon which the Board relied was false.

STATE BOARD OF MEDICAL EXAMINERS

By: William V. Harrer M.D. B.C.P.
William V. Harrer, M.D., B.L.D.
President

I have read and understood the within Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.

@.

Luis Fernandez, M.D.

Consented to as to form.

Neal J. Berger Esq

Consented to on behalf of the
Physicians' Health Program:

David I. Canavan, M.D.
Medical Director Emeritus
Physicians' Health Program

I hereby agree to supervise the **practice** of Dr. Fernandez. to provide the Board with quarterly reports documenting Dr. Fernandez' progress. and to provide immediate notification of any indication of a resumption of Respondent's former violative behavior or non-compliance with the Board's directive as expressed herein.

Felix E. Roque, M.D.